

Eff.: Immediate

ORDINANCE NO. 15-3863

AN URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK EXTENDING AND AMENDING AN INTERIM DEVELOPMENT CONTROL ORDINANCE WHICH TEMPORARILY PROHIBITS THE ISSUANCE OF CERTAIN PERMITS AND BUILDING PERMITS FOR BUILDINGS OR STRUCTURES IN THE R-1 AND R-1-H SINGLE FAMILY RESIDENTIAL ZONES THAT DO NOT MEET SPECIFIED INTERIM DEVELOPMENT STANDARDS.

City Attorney's Synopsis

This Ordinance extends an interim zoning measure which limits the issuance of various land use permits and building permits for certain buildings or structures in the R-1 and R-1-H single family residential zones that do not meet the interim development standards set forth in Ordinance No. 15-3,862, adopted on March 31, 2015. This measure contains certain specified exceptions and will not be applicable to any project for which a complete application has been submitted for a Hillside Development Permit or plan-check prior to 5:00 p.m. on March 10, 2015.

This Ordinance further restates and amends the interim zoning measure, Ordinance No. 15-3,862, by requiring pipeline exemption appeals before Council to be filed no later than May 22, 2015 by 5:00 p.m. Additionally, this Ordinance clarifies allowable setbacks for new construction, specifically to allow for legal nonconforming setbacks to be continued on first floor additions only.

This Ordinance will be effective immediately until March 30, 2017, unless terminated sooner. This measure will allow the City to continue its study the feasibility of zoning code changes to single-family development standards

THE COUNCIL OF THE CITY OF BURBANK FINDS, DETERMINES AND DECLARES THAT:

A. On March 31, 2015, the Council adopted, as an urgency measure pursuant to Government Code Section 65858(a), Ordinance No. 15-3,862, which instituted a temporary prohibition of the issuance of Hillside Development Permits (BMC 10-1-606), Conditional Use Permits, Single Family Special Development Permits (BMC 10-1-607), Administrative Use Permits (BMC 10-1-1936), variance or building permits within the R-1 and R-1-H single family residential zones if the building(s) or structure(s) to be constructed, expanded or enlarged do not meet the interim development standards set forth in Ordinance No. 15-3,862. In enacting Ordinance No. 15-3,862, the Council found the following:

1. A combination of factors including high land values, low interest rates, and increasing demands for household space have resulted in widespread single-family development throughout the City, including new homes, remodels, expansions, and complete rebuilds. Many of these homes are of a height, size, and mass that are considered to be out of character with neighboring single-family properties and the Burbank community.

2. These oversized homes encroach upon the comfort and quality of life of neighboring residents by creating structures that loom over neighboring properties, encroach upon open yard areas, and diminish the low intensity single-family nature of the neighborhood. Members of the community have expressed many concerns about the nature of the pace, amount, and type of development occurring in single family neighborhoods, which is further evidence of the threat to the public welfare that these structures pose. The continued approval of permits for the construction of such homes threatens the welfare of Burbank residents and properties across the City, as additional out-of-character homes are built throughout the City.

3. The Council determined that it is in the best interests of the City, in the protection of the public health, safety and welfare, that the development standards for single family development should be analyzed by the staff, property owners and the citizens of the City to determine whether modifications to the City's zoning code are necessary to mitigate such impacts and, if so, what modifications should be made.

4. To effectively accomplish any necessary revisions to the zoning code, limited duration interim development controls should be adopted with respect to the consideration of development and building permits in the City's single-family residential zones.

5. The absence of such interim development controls would create a serious threat to the orderly and effective implementation of any zoning amendments which may be adopted by the City as a result of the ordered studies, because any permits approved at this time would permit development that may be in conflict with or frustrate the contemplated updates and revisions to the zoning code.

6. The public interest, convenience, health, safety, welfare and necessity as described herein, required the immediate enactment of Ordinance No. 15-3,862 as an urgency measure so as to put into effect these interim development controls pending the completion of the studies and implementation of any recommended, appropriate revisions to the zoning code, in order to prevent the frustration of such studies and the implementation thereof.

7. A current and immediate threat to the public health, safety and welfare of the City and its citizens necessitated the immediate enactment of Ordinance No. 15-3,862.

B. On March 3, 2015, the Council committed approximately \$120,000 for the professional services of Dyett & Bhatia with John Kaliski Architects to prepare single-family guidelines and zoning code changes. Council directs that all studies be commenced and completed as expeditiously as is practicable.

C. By force of law and on its own terms, Ordinance No. 15-3,862 expires and will be of no further force and effect forty-five (45) days from its adoption date, which date is May 15, 2015, unless extended on or before the 45th day.

D. The Council has received a report which complies with the reporting requirement of Government Code Section 65858(d), whereby City staff has identified the steps taken to begin studying the various development standards and potential code amendments to alleviate the condition which led to the adoption of the this interim zoning measure.

E. Forty-five (45) days from adoption of Ordinance No. 15-3,862 is not sufficient time to adequately complete evaluation and potential adoption of a zone changes so as to protect the public safety, health and welfare of single family neighborhoods from the intensification of development in single family neighborhoods.

F. Government Code Section 65858 provides that after notice and a public hearing the City Council may, by a four-fifths vote, extend Ordinance No. 15-3,862 for a period of up to twenty-two (22) months and fifteen (15) days (March 30, 2017).

G. On May 5, 2015, the City Council held a duly noticed public hearing to consider extending and amending Ordinance No. 15-3,862.

H. The City Council finds, determines and declares that the public health, safety and welfare require the enactment of this Ordinance extending Ordinance No. 15-3,862 as an urgency measure so as to maintain the interim development controls set forth in that interim ordinance pending the completion of the studies and implementation of any recommended and appropriate revisions to the zoning code, in order to prevent the frustration of such studies, and the implementation thereof. The Council further finds that the facts that constitute the immediate threat to the public health, safety, and welfare are set forth in Section A of this Ordinance.

I. Pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, the Council finds and determines it is certain that there is no possibility that the enactment of this Ordinance may have a significant impact on the environment, because this measure will permit less development than currently permitted under existing zoning regulations.

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

1. Pursuant to Government Code Section 65858, Ordinance No. 15-3,862 is hereby extended for a period of up to twenty-two (22) months and fifteen (15) days from March 15, 2015 through March 30, 2017 and amended as set forth below.

2. While this Ordinance is in effect, there shall be no issuance of any Hillside Development Permit (BMC 10-1-606), Conditional Use Permit, Single Family Special Development Permit (BMC 10-1-607), Administrative Use Permit (BMC 10-1-1936), variance or building permit within the R-1 and R-1-H single family residential zones if the building(s) or structure(s) to be constructed, expanded, or enlarged will conflict with the standards set forth in Paragraph 3 below, unless the building or structure is exempt from this Ordinance pursuant to Paragraph 4 or unless an appeal has been granted pursuant to Paragraph 5 below. While this Ordinance is in effect, no permits shall be issued for a Whole House Tear Down (as defined in this section) unless a building permit application with construction plans and a property elevation survey consistent with Paragraph 3 of this Ordinance accompany the permit application.

A Whole House Tear Down is defined as demolition of at least 50% of the total length of all the walls; applicant shall calculate the linear length of all exterior and interior walls. The calculated length should not exclude openings because part of the opening is a structural header, and the walls must remain as structural elements in the new plan.

3. While this Ordinance is in effect, the following interim development standards shall apply in the R-1 and R-1-H single-family residential zones. Any and all development standards applicable to these zones as set forth in the Burbank Municipal Code (the "Code") that are not in conflict with these interim standards shall remain in full force and effect. Any interim standards specified herein that conflict with existing development standards as set forth in the Code shall supersede any conflicting standards. Any terms not defined herein shall have the meaning ascribed to them in the Code.

A. Floor Area Ratio applicable to all R-1 and R-1-H zones.

1. "Floor Area Ratio" ("FAR") shall mean the numerical value obtained by dividing the above ground Floor Area of a building or buildings located on a lot by the total area of Lot. As an example, if the FAR is 0.4, when the area of the Lot is 6,200 square feet, a house of 2,500 sq. ft. might be permitted. This Ordinance establishes new definitions for floor area, story and FAR calculations, as set forth in section B, below.

2. FAR for One Story Houses. The FAR of all one story residential homes in the R-1 and R-1-H zones shall not exceed 0.4. No deviations to increase the FAR shall be allowed on lots less than 10,000 sq. ft., including but not limited to the .05 bonus options for new houses with a FAR of

0.4. For lots greater than 10,000 square feet the .05 bonus options set forth in Section 10-1-603(D)(6) may be used (when applicable) for new homes.

3. New Two Story Houses. FAR shall not exceed .40 for new two story houses. Each story shall be counted in calculating the FAR.

4. Any second story addition is allowed, so long as the house does not exceed a total of .40 FAR including the addition.

B. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

“Story”: That portion of a building that is area between the upper surface of any floor and the upper surface of the next floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling above. A basement, cellar, parking garage or unused underfloor space shall not be considered a story if three (3) feet or less above grade. A one story house is a maximum of 12’ to top of plate, where the plate is a horizontal member built into or laid along the top of a wall to support and distribute the pressure from joists, rafters, etc). Any space with a ceiling or top plate exceeding the maximum allowed story height shall be considered as constituting two stories for the purpose of calculating Floor Area.

An exception to the story definition is for ground floor additions to homes with existing rooms that have ceilings higher than 12 feet. In calculating the height of a story for ground floor additions, the existing height of the existing rooms will be deemed a story. For example, if an existing home has a 14 ft. ceiling, it will be considered single story for the purpose of FAR calculations for the addition.

“Floor Area”: The total gross floor area of all enclosed structures on the property, including but not limited to the main dwelling structure, accessory structures, second dwelling units, enclosed patios, and sheds. Garages (and carports) and certain balconies shall be included in Floor Area as follows:

a) Garages (and carports) over 400 sq. feet included in Floor Area: Garages (or carports) or portions thereof up to 400 square feet shall not be included in the calculation of Floor Area. All Garages (or carports) that exceed 400 sq. ft. shall have the excess square footage included in Floor Area. Porte Cochere that is 12 feet to the top of the plate with no second story above it does not count towards FAR.

b) Certain balconies included in Floor Area: All second story balconies/porches, and ground floor porch, patio or balcony in excess of 250 sq.

ft. when covered¹ shall be included in the calculation of FAR. All other non-enclosed structures shall not be included in the floor area ratio in accordance with Section 10-1-603 D 2.

Floor Area shall be calculated for each story. Usable horizontal area will no longer be considered when calculating floor area.² The total gross floor area shall be the sum of each story floor area. Interior spaces greater than 12 feet count as floor area on a second story. Any portion of a structure, including the area above a staircase, over 12 feet in interior height, shall count as floor area on a second story. Any space with a ceiling or top plate exceeding the maximum allowed one story height shall be considered as constituting two stories for the purpose of calculating floor area.

Floor area is that area between the floor and roof above it, as measured from the interior of the exterior walls. The floor area of each story shall be combined for the total gross floor area.

C. Setback.

As of the date of this Ordinance, first story construction must be setback in the front yard and street facing side yard, in an amount equal to the existing setback for that house or the existing setback prior to demolition. In the event a lot was vacant on the date of this Ordinance, the existing setback shall be determined by averaging the setbacks on the same side of the street for that block. All new construction for two story houses, including additions shall comply with setbacks as required on both the second and first floor. Existing legal non-conforming setbacks may not be continued on the second floor, but may be continued on the first floor.

Current code (as of the date of this Ordinance) requires a minimum setback of twenty five (25) feet in the front yard. Under this Ordinance, the front yard setback may be greater.

Current code (as of the date of this Ordinance) requires a minimum setback for street facing side yards of twenty per cent (20%) of lot width but no less than six (6) feet and no more than twenty (20) feet in the street facing side yard. Under this Ordinance, the street facing side yard setback may be greater.

For example: if the existing house had a 30 foot front yard setback and is a Whole House Tear Down as defined herein, then the new construction must comply with a 30 foot front yard setback. If, however, the existing home had a 15

¹ A ground floor porch, patio or balcony is considered covered whenever the installation of the cover requires a building permit.

² Currently, code defines floor area in part as “usable” horizontal area. The “usable” requirement is being deleted.

foot front yard setback, the new construction must comply with the code required 25 foot front yard setback.

An additional setback is required for second story construction as follows: ten (10) foot additional front setback and an additional five (5) foot setback from any side yards without a driveway.

D. Single Family Development Permit Review for new construction and/or Whole House Tear Down.

SINGLE FAMILY DEVELOPMENT PERMITS:

1. This Section outlines the process requirements and findings for building permits applicable to new structures in single family residential zones that fall under the IDCO. No building permit may be issued for new construction (excluding additions) or Whole House Tear Down, as defined herein, unless a Single Family Development Permit in accordance with this section is issued. Applicants shall submit an application, including the same application fee required for processing the Single Family Development Permit process in Section 10-1-607; however, Applicants will be required to pay for all costs to comply with the noticing provisions herein.

2. Intent and purpose. The intent and purpose of the Single Family Special Development Permit is to allow new development to proceed that is consistent with the IDCO, while providing the City with an opportunity to review compatibility with other houses in its neighborhood.

3. The Community Development Director, or Planning Board or City Council if appealed, are authorized to attach conditions to the approval of any of the development permits discussed in this Section. Such conditions may include, but are not limited to, conditions requiring physical changes to the proposed project. All conditions imposed must be for the purpose of satisfying the required findings, mitigating environmental or other impacts of the project, and/or protecting the public health, safety, convenience, or welfare.

4. Process and public notice. Single Family Special Development Permits must be processed and approved or denied in the same manner as an Administrative Use Permit per Division 4.1 of Article 19 of this Chapter, including public notice of decision, appeals, and hearings; except that notice of the decision must be mailed to all property owners and occupants within a 500 foot radius. Upon submission of an application, Applicants shall post one four (4) foot by eight (8) foot sign approved by the Community Development Director.

5. Required findings. In lieu of the finding required by for Administrative Use Permits in Section 10-1-1956, the Director, or Planning Board

or Council if appealed, may not approve a Single Family Special Development Permit unless the following findings are made:

a. The house is compatible with existing houses in the neighborhood, which is defined as all of the houses on the same side of the block within 500 feet on each side and the four properties located behind or adjacent to the properties behind the house (the "Neighborhood") and consistent with the prevailing neighborhood character.

b. The house is reasonably consistent in scale and proportion to existing houses in the Neighborhood.

c. The house does not unnecessarily or unreasonably encroach upon neighboring properties or structures in a visual or aesthetic manner through its size, location, orientation, setbacks, or height.

d. The house does not impose unnecessary or unreasonable detrimental impacts on neighboring properties or structures, including but not limited to impacts related to light and glare, sunlight exposure, air circulation, privacy, or aesthetics.

4. Pipeline Exemptions. This Ordinance and its provisions, notwithstanding any other provision hereof, shall not be deemed to prohibit any development, redevelopment, construction, reconstruction, expansion, or enlargement:

a. as to any property which has a valid vested right to construct prior to the effective date of this Ordinance;

b. as to any structure for which a building permit has been issued on or prior to the effective date of this Ordinance;

c. as to any structure for which a Hillside Development Permit pursuant to Section 10-1-606 has been approved issued on or prior to the effective date of this Ordinance (whether or not the permit has been appealed);

d. as to any structure for which a complete set of construction drawings has been submitted to the Building Division for plan-check along with the applicable plan check fee prior to 5:00 p.m. on March 10, 2015;

e. as to any structure for which a completed application for a Hillside Development Permit pursuant to Section 10-1-606 along with the application fee, has been submitted to, and deemed complete by, the Planning Division prior to 5:00 p.m. on March 10, 2015;

f. as to any structure for which an applicant has received a Conditional Use Permit, a Single Family Special Development Permit pursuant to Section 10-1-607, an Administrative Use Permit pursuant to Section 10-1-1936, or variance, if prior to 5:00 p.m. on March 10, 2015 a complete set of construction drawings has been submitted to the Building Division for plan-check with payment of the applicable plan check fee;

g. Emergency repairs to strengthen or restore to a safe condition any building or part thereof if declared to be unsafe by any City or other governmental official charged with protecting the public health or safety, and if ordered by such official to make those repairs provided that this provision shall not be used to enlarge or expand an existing home.

5. Appeal to Council for hardship/exemption applicability determination.

a. Hardship. An applicant may request permission that a structure deviate from the requirements set forth in the adopted Ordinance, upon application to the City Clerk for consideration by Council at its next available meeting, or by a person or body designated by Council, if it can be established that compliance with the adopted Ordinance creates an undue and an extreme hardship due to characteristics and circumstances unique to its property.

b. Appeal from denial to exempt project under Pipeline Exemptions. No application for a Pipeline Exemption appeal pursuant to this subsection will be accepted by the City Clerk after May 22, 2015 no later than 5:00 p.m. Up to May 22, 2015, an applicant may, upon application to the City Clerk for consideration by Council, at its next available meeting, but in no case more than 60 days from date of submission of said application, or by a person or body designated by Council, appeal staff determination that a project is not exempt from the IDCO under the aforementioned Pipeline Exemption set forth in Section 3 above. For example, the applicant may argue that the delay in submitting final plans/application before March 10, 2015, was beyond their control, applicant acted in good faith, and the plans or application were substantially completed prior to March 10, 2015.

6. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

7. This Ordinance is adopted as an urgency measure, shall be introduced, passed and adopted by a 4/5ths vote at one and the same meeting and shall become effective immediately upon the adoption thereof

8. The City Clerk shall certify to the passage of this Ordinance and cause the this Ordinance to be published, within fourteen days of the adoption hereof, once in a newspaper of general circulation, published and circulated in the City of Burbank, California.

PASSED AND ADOPTED this 5th day of May, 2015.

s/Bob Frutos

Bob Frutos

Mayor

Attest:

s/Zizette Mullins

Zizette Mullins, CMC, City Clerk

Approved as to Form
Office of the City Attorney

By: s/Mary F. Riley

Mary F. Riley, Sr. Asst. City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, CMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. 3863 was duly and regularly passed and adopted by a unanimous (5/0) vote of the Council of the City of Burbank at its regular meeting held on the 5th day of May, 2015, by the following vote:

AYES: Council Members Gabel-Luddy, Gordon, Rogers, Talamantes and Frutos.

NOES: Council Members None.

ABSENT: Council Members None.

I further certify that said Ordinance was published as required by law in a newspaper of general circulation in the City of Burbank, California on the 16th day of May, 2015.

s/Zizette Mullins

Zizette Mullins, CMC, City Clerk